IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7017 OF 2006

Mr.Thakurdas Fatandas Gidwani ..Petitioner

Vs.

Mr.Suryakant Gangaram Shedge ..Respondents

Mr.S.A.Sawant for the petitioner

Mr.S.M.Chandrachud for the respondents

CORAM : A.P.DESHPANDE, J

DATED : 22ND NOVEMBER, 2006

P.C.:

1. The writ petition is directed against the order passed by the Additional District Judge, Small Causes Court, Pune rejecting the application moved by the petitioner / tenant at Ex.33 seeking stay of Civil Suit no.67 of 2005, by moving an application under section 10 of the Civil Procedure Code.

2. The respondent landlord instituted a civil suit no.606 of 1993 against the petitioner / tenant solely on the ground of his bonafide reasonable

need. The said suit was dismissed by the trial court whereas in an appeal preferred by the respondent landlord, the first appellate court directed the petitioner tenant to hand over half portion of the tenanted premises. Aggrieved by the judgment and decree passed by the appellate court, the writ petition came to be filed in this court and I am informed that rule has been granted in the writ petition and the entire judgment and decree has been stayed.

3. In this fact situation, the respondent at a subsequent point of time instituted a regular civil suit no.67 of 2005 and prayed for a decree of eviction under clause (n) r/w clause (g) of sub-section 1 of section 16 of Part IV of the Maharashtra Rent Control Act, 1999. In the submission of the petitioner, so far as the claim made under clause (g) is concerned, the same relates to reasonable and bonafide requirement of the landlord which is the subject matter in this suit. The learned counsel submits that without their being any change in the circumstances which prevail in the year 1993, again a prayer is made

for ejectment on the same ground and as such the trial court ought to have stayed the second suit as the matter in issue in the first suit and the second suit is substantially the same.

4. Per contra, the learned counsel for the respondent submits that the decree for possession under clause (g) of sub section 1 of section 16 of Part IV of Maharashta Rent Control Act is wrongly claimed and he is abandoning the same. He undertakes to abandon the claim seeking eviction under clause (g) of subsection 1 of section 16 of Part IV of Maharashtra Rent Control Act by filing a purshis in this court. I accept the statement made by the learned counsel for the respondent. In view of abandonment, the claim for eviction under clause (g) of subsection 1 of section 16 of the Maharashtra Rent Control Act, there is no similarity of cause of action in the suit instituted in the year 1993 and the one instituted in the year 2005. As such admittedly, section 10 of the C.P.C. will have no application. The petition thus, is partly allowed and abandonment of claim by the respondent / plaintiff for eviction

under clause (g) of subsection 1 of section 16 is allowed. In view of abandonment, there is no reason to interfere with the impugned order in this writ petition. Writ petition is accordingly disposed of.

5. The learned counsel for the respondent undertakes to file a purshis of abandonment on Friday, 24.11.2006.

(SHRI A.P.DESHPANDE, J)